

CHAPTER 28-25

PROCEEDINGS SUPPLEMENTARY TO THE EXECUTION

28-25-01. Examination of judgment debtor.

The court out of which an execution against property issued upon a judgment for more than twenty-five dollars, exclusive of costs, may require the judgment debtor to appear and answer concerning the judgment debtor's property:

1. If the execution has been returned unsatisfied in whole or in part, by the sheriff of the county where the judgment debtor resides or has a place of business, or by the sheriff of the county where issued, if the judgment debtor is a nonresident; or
2. If before the return of the execution it is made to appear to the court that the judgment debtor has property which the judgment debtor unjustly refuses to apply to the satisfaction of the execution.

28-25-02. Where examination held.

The examination must be held in the county where the judgment debtor resides, if the judgment debtor is a resident of the state. Otherwise, it may be held where ordered by the court.

28-25-03. Before whom examination held.

The examination may be had before the court or before a referee appointed by the court. If the judgment debtor is a resident of a judicial district other than that from which the execution issued, the court may refer the examination to the district court of the county of the debtor's residence.

28-25-04. Witnesses may be called.

On an examination under this chapter, either party may examine witnesses in that party's behalf and the judgment debtor may be examined in the same manner as a witness.

28-25-05. When debtor may be arrested.

Instead of the order requiring the attendance of the judgment debtor, the judge, upon proof by affidavit or otherwise to the judge's satisfaction that there is danger that the debtor will leave the state or attempt to avoid being found and that there is reason to believe that the debtor has property which the debtor unjustly refuses to apply to such judgment, may issue a warrant requiring the sheriff of any county where such debtor may be to arrest and bring the debtor before such judge. Upon being brought before the judge, the debtor may be examined on oath and, if it then appears that there is danger that the debtor will leave the state and that the debtor has property that the debtor has refused unjustly to apply to such judgment, the debtor may be ordered to enter into an undertaking with one or more sureties that the debtor from time to time will attend before the judge as directed and that during the pendency of the proceedings the debtor will not dispose of any portion of the debtor's property not exempt from execution. In default of entering into such undertaking, the debtor may be committed to jail by warrant of the judge as for contempt.

28-25-06. Debtor cannot claim privilege.

A person on examination pursuant to this chapter may not be excused from answering any question on the ground that the person's examination will tend to incriminate the person, but the person's answer may not be used as evidence against the person in any criminal proceeding or prosecution.

28-25-07. Examination of debtor's debtor.

After the issuing or return of an execution against property of the judgment debtor, or of any one of the several debtors in the same judgment, and upon an affidavit that any person, corporation, or limited liability company has property of such judgment debtor or is indebted to the judgment debtor in an amount exceeding ten dollars, the judge by an order may require such person, corporation, or limited liability company, or any officer or member thereof, to

appear at a specified time and place and answer concerning the same. The judge also may require notice of such proceeding to be given to any party to the action in such manner as may seem proper to the judge.

28-25-08. Proceedings applicable to joint debtors.

The proceedings mentioned in this chapter may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which said action was commenced, so far as relates to the joint property of such debtors, and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to the same effect.

28-25-09. Witnesses - Attendance compelled.

Witnesses may be required to appear and testify on any proceeding under this chapter in the same manner as upon the trial of an issue.

28-25-10. Answers on oath - Referee reports to court.

All examinations and answers before a judge or referee under this chapter must be on oath, except that when a corporation answers, the answer must be on the oath of an officer of the corporation and that when a limited liability company answers, the answer must be on the oath of a manager of the limited liability company. If the examination is before a referee, it must be taken by the referee and certified to the judge appointing who appointed the referee.

28-25-11. Property applied - Wages exempt - Suspension of occupational or professional license for nonpayment of defaulted state guaranteed student loans.

1. The judge may order any property of the judgment debtor not exempt from execution in the hands either of the judgment debtor or of any other person or due the judgment debtor to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for the debtor's personal services at any time within sixty days next preceding the order cannot be so applied when it is made to appear, by the debtor's affidavit or otherwise, that the earnings are necessary for the use of a family supported wholly or partly by the debtor's labor.
2. If the debt for which a judgment is entered is for a guaranteed student loan, the court, after considering the factors in subsection 1, shall address and make specific findings on the issue of whether the judgment debtor has an occupational or a professional certificate license or permit issued by or on behalf of the state or any occupational or professional boards, which the judgment debtor is required to obtain before engaging in the judgment debtor's occupation or profession. The court, based on principles of fairness, including consideration of whether the judgment debtor has been unjustly enriched, may suspend a judgment debtor's certificate, license, or permit. Following a decision to suspend a judgment debtor's certificate, license, or permit, the court shall notify the judgment debtor that the decision becomes final thirty days after the notification unless the judgment debtor satisfies the entire outstanding payment due or makes regular payment on the judgment in a manner and at times satisfactory to the court. The court shall notify the proper licensing authority of the court's decision to suspend a judgment debtor's certificate, license, or permit. A certificate, license, or permit suspended by an order issued under this section may be reissued only by order of the court. An appeal by a judgment debtor who has had a certificate, license, or permit suspended under this section is an appeal from the court's order and may not be appealed to the licensing authority.

28-25-12. Receiver appointed - Transfers enjoined.

The judge by order also may appoint a receiver of the property of the judgment debtor in the same manner and with like authority as if the appointment were made by the court according to section 32-10-01. Before the appointment of such receiver, the judge shall ascertain, if

practicable, by oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor and, if such proceedings are so pending, the plaintiff therein shall have notice to appear before the judge and likewise shall have notice of all subsequent proceedings in relation to such receivership. No more than one receiver of the property of a judgment debtor may be appointed. The judge by order also may forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith.

28-25-13. Record of orders.

Whenever the judge grants an order for the appointment of a receiver of the property of the judgment debtor, the same must be filed in the office of the clerk of the court from which execution issued, and the clerk shall record the order and shall note the time of the filing of such order therein. A certified copy of the order must be delivered to the receiver named therein and the receiver is vested with the property and effects of the judgment debtor from the time of the filing and recording of the order as aforesaid. The receiver of the judgment debtor is subject to the direction and control of the court appointing the receiver. Before the receiver is vested with any real property of such judgment debtor, a certified copy of the order must be recorded in the office of the recorder of the county in which any real estate of such judgment debtor sought to be affected by such order is situated, and also in the office of the recorder of the county in which such judgment debtor resides.

28-25-14. Procedure on adverse claims.

If it appears that a person, corporation, or limited liability company alleged to have property of the judgment debtor, or to be indebted to the judgment debtor, claims an interest in the property adverse to the judgment debtor or denies the debt, such interest or debt is recoverable only in an action against such person, corporation, or limited liability company by the receiver, but the judge by order may forbid a transfer or other disposition of such property or interest until a sufficient opportunity is given to the receiver to commence the action and prosecute the same to judgment and execution. Such order may be modified or dissolved by the judge granting the same at any time on such security as the judge shall direct.

28-25-15. Allowance of witness fees and disbursements.

The judge may allow to the judgment creditor or to any party examined, whether a party to the action or not, witness fees and disbursements.

28-25-16. Punishment for contempt.

If any person, party, or witness disobeys an order of the judge or referee duly served, such person may be punished by the judge as for a contempt. In all cases of commitment under this chapter, the person committed, in case of inability to perform the act required, or to endure the imprisonment, may be discharged from imprisonment by the judge committing the person.